

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

SENATE BILL 205

**49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009**

INTRODUCED BY

Stephen H. Fischmann

AN ACT

RELATING TO ECONOMIC DEVELOPMENT; ENACTING THE NEW MEXICO  
RESEARCH APPLICATIONS ACT; PROVIDING FOR A NONPROFIT  
CORPORATION TO INTERACT WITH BUSINESS AND GOVERNMENT ENTITIES,  
UNIVERSITIES, PRIVATE FOUNDATIONS AND NATIONAL LABORATORIES FOR  
THE PURPOSE OF FOSTERING ECONOMIC DEVELOPMENT IN THE AREAS OF  
TECHNOLOGY AND INTELLECTUAL PROPERTY; REPEALING THE TECHNOLOGY  
RESEARCH COLLABORATIVE AND TRANSFERRING ITS PROPERTY TO THE  
ECONOMIC DEVELOPMENT DEPARTMENT; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. [NEW MATERIAL] SHORT TITLE.--Sections 1  
through 10 of this act may be cited as the "New Mexico Research  
Applications Act".

Section 2. [NEW MATERIAL] PURPOSES.--The purposes of the  
New Mexico Research Applications Act are to:

.175080.3SA

underscored material = new  
[bracketed material] = delete

underscoring material = new  
[bracketed material] = delete

1           A. promote the public welfare and prosperity of the  
2 people of New Mexico;

3           B. foster economic development in the area of  
4 intellectual property within New Mexico;

5           C. attract investments that will drive  
6 technological innovations in New Mexico;

7           D. create high-value technology jobs in New Mexico  
8 with appropriately trained employees to fill such jobs;

9           E. forge links, critical partnerships and  
10 collaboration among New Mexico's business communities,  
11 universities, private foundations, national laboratories and  
12 government through the development of a research applications  
13 center;

14           F. support educational initiatives in science,  
15 technology, engineering and mathematics in the state to ensure  
16 the availability of the future work force required to meet the  
17 goals of the New Mexico Research Applications Act; and

18           G. engage in cooperative ventures related to the  
19 use of research and development applications, including the use  
20 of research and development applications as a means of  
21 enhancing state and local resource development and promoting  
22 innovative technological advances in the areas of economic,  
23 community and work force development; education; science;  
24 technology; engineering; mathematics; research and development;  
25 conservation; and health care, within New Mexico.

.175080.3SA

underscored material = new  
[bracketed material] = delete

1           Section 3. [NEW MATERIAL] DEFINITIONS.--As used in the  
2 New Mexico Research Applications Act:

3           A. "board" means the board of directors of the  
4 research applications center;

5           B. "department" means the economic development  
6 department;

7           C. "research applications center" means the  
8 nonprofit corporation created pursuant to the Nonprofit  
9 Corporation Act and the New Mexico Research Applications Act;

10          D. "technological innovations" includes research,  
11 development, prototype assembly, manufacturing, patenting,  
12 licensing, marketing and sale of inventions, ideas, practices,  
13 applications, processes, machines and technology and related  
14 property rights of all kinds; and

15          E. "university" means:

16                 (1) a New Mexico educational institution named  
17 in Article 12, Section 11 of the constitution of New Mexico;

18                 (2) a community college organized pursuant to  
19 the Community College Act; or

20                 (3) a technical and vocational institute  
21 organized pursuant to the Technical and Vocational Institute  
22 Act.

23           Section 4. [NEW MATERIAL] RESEARCH APPLICATIONS CENTER--  
24 FORMATION--BOARD OF DIRECTORS--PUBLIC ACCESS TO MEETINGS AND  
25 MINUTES.--

.175080.3SA

underscoring material = new  
[bracketed material] = delete

1           A. The department shall, pursuant to the Nonprofit  
2 Corporation Act and internal revenue service regulations  
3 pertaining to nonprofit corporations, incorporate a corporation  
4 with the name "New Mexico research applications center";  
5 provided that, if that name is not available, the department  
6 shall select another name that reflects the purposes of the New  
7 Mexico Research Applications Act.

8           B. The articles of incorporation shall include:

9                   (1) provisions for appointing the board  
10 pursuant to Subsection C of this section;

11                   (2) provisions requiring that board vacancies  
12 shall be filled by the appropriate appointing authority;

13                   (3) a statement that board members, subject to  
14 the availability of funds, shall receive per diem and mileage  
15 at the rate provided in the Per Diem and Mileage Act for  
16 nonsalaried public officers and shall receive no other  
17 compensation, perquisite or allowance;

18                   (4) a statement that the corporation will have  
19 no members;

20                   (5) provisions that prohibit any board action  
21 inconsistent with the New Mexico Research Applications Act;

22                   (6) provisions that prohibit the board from  
23 increasing the number of directors;

24                   (7) a plan of distribution of the assets  
25 remaining after dissolution or final liquidation of the

.175080.3SA

1 corporation. The plan shall require that, after all  
2 liabilities and obligations are paid, all funds of the  
3 corporation shall be deposited in the general fund and all  
4 other assets shall be distributed to the department of finance  
5 and administration; and

6 (8) any other provisions deemed necessary by  
7 the department to ensure compliance with the New Mexico  
8 Research Applications Act.

9 C. The board of directors shall be appointed in a  
10 manner that reflects the geographic, cultural and ethnic  
11 diversity of this state. The board shall consist of thirteen  
12 members with relevant experience or expertise in state  
13 government, local governments, businesses located in New  
14 Mexico, universities, private foundations, national  
15 laboratories or investments. The members shall be as follows:

16 (1) the governor's science advisor, who shall  
17 be chair of the board;

18 (2) six members appointed by the governor;  
19 provided that there shall be at least one member from each  
20 congressional district and no more than three members from a  
21 single congressional district; and

22 (3) six members shall be appointed by the  
23 legislature as follows:

24 (a) one member appointed by the speaker  
25 of the house of representatives;

.175080.3SA

underscoring material = new  
[bracketed material] = delete

1 (b) one member appointed by the majority  
2 leader of the house of representatives;

3 (c) one member appointed by the minority  
4 leader of the house of representatives;

5 (d) one member appointed by the  
6 president pro tempore of the senate;

7 (e) one member appointed by the majority  
8 leader of the senate; and

9 (f) one member appointed by the minority  
10 leader of the senate.

11 D. Members shall be appointed for terms of four  
12 years except that, of the initial appointees, three members  
13 appointed by the governor, the member appointed by the speaker  
14 of the house of representatives, the member appointed by the  
15 president pro tempore of the senate and the member appointed by  
16 the minority leader of the house of representatives shall be  
17 appointed for terms of two years.

18 E. Board members may designate an alternate to  
19 represent their interest, if approved by the appointing  
20 authority.

21 F. All meetings, minutes of meetings and reports of  
22 the board, the research applications center and any  
23 corporations formed by the research applications center shall  
24 be available and open to the public, except that portion of  
25 meetings, minutes or reports in which business-sensitive

.175080.3SA

underscored material = new  
[bracketed material] = delete

1 information, as determined by the board, is discussed. Minutes  
2 of all meetings and reports of the research applications center  
3 and any corporations formed by the research applications center  
4 shall be provided by the board to the legislative finance  
5 committee and any other interim or standing legislative  
6 committees specified by the legislative finance committee  
7 within one month of the date of the meeting or date of the  
8 report.

9 G. The board shall hire a president who shall be  
10 the chief administrative officer of the research applications  
11 center.

12 Section 5. [NEW MATERIAL] RESEARCH APPLICATIONS CENTER--  
13 POWERS.--As directed by the board, the research applications  
14 center may:

15 A. acquire, by lease or purchase, the land,  
16 buildings, facilities, improvements and equipment necessary to  
17 achieve the purposes of the New Mexico Research Applications  
18 Act;

19 B. lease to any person any part or all of the land,  
20 buildings, facilities, improvements and equipment acquired  
21 pursuant to Subsection A of this section;

22 C. enter into contracts, joint powers agreements,  
23 memoranda of understanding and other agreements with public and  
24 private entities in order to carry out the purposes of the New  
25 Mexico Research Applications Act;

.175080.3SA

underscoring material = new  
[bracketed material] = delete

1           D. incur liabilities or borrow money at rates of  
2 interest that the research applications center may determine;  
3 provided that:

4                   (1) any debt incurred shall be payable solely  
5 from the money available to the research applications center  
6 and does not create an obligation or indebtedness of the state  
7 within the meaning of any constitutional provision;

8                   (2) no breach of any contractual obligation  
9 incurred pursuant to the New Mexico Research Applications Act  
10 shall impose a pecuniary liability or a charge upon the general  
11 credit or taxing power of the state, and any debt incurred is  
12 not a general obligation for which the state's full faith and  
13 credit is pledged; and

14                   (3) the research applications center shall not  
15 incur any debt greater than one million dollars (\$1,000,000) or  
16 for a term longer than eight months without the prior approval  
17 of the state board of finance;

18           E. enter into business arrangements to carry out  
19 technological innovations with one or more business entities,  
20 governmental entities, universities, private foundations,  
21 national laboratories or other persons;

22           F. otherwise conduct, sponsor, finance and contract  
23 as necessary to further technological innovations;

24           G. purchase, take, receive or otherwise acquire;  
25 own; hold; dispose of; use; or otherwise deal in and with

.175080.3SA

underscored material = new  
[bracketed material] = delete

1 property, including an interest in or ownership of intangible  
2 personal property, intellectual property or technological  
3 innovations;

4 H. sell, convey, pledge, exchange, transfer or  
5 otherwise dispose of its assets and properties for  
6 consideration upon terms and conditions that the board shall  
7 determine;

8 I. solicit, receive and administer grants,  
9 contracts and gifts from federal, state and private sources;

10 J. invest and reinvest its funds;

11 K. employ officers and employees that it deems  
12 necessary, set their compensation and prescribe their duties;

13 L. enter into agreements with insurance carriers to  
14 insure against any loss in connection with its operations;

15 M. authorize retirement programs and other benefits  
16 for salaried officers and employees;

17 N. create such enterprise funds, revolving funds or  
18 other financial arrangements as it deems necessary to carry out  
19 the purposes of the New Mexico Research Applications Act; and

20 O. enter into license agreements and contracts  
21 involving intellectual property and technological innovations,  
22 including agreements for patents, copyrights, franchises and  
23 trademarks.

24 Section 6. [NEW MATERIAL] APPLICABILITY OF OTHER LAWS.--

25 A. Except as otherwise provided in the New Mexico

.175080.3SA

underscored material = new  
[bracketed material] = delete

1 Research Applications Act, the research applications center  
2 shall not be deemed to be the state, or one of its agencies,  
3 instrumentalities, institutions or political subdivisions for  
4 the purpose of applying any other laws, including those  
5 relating to personnel, procurement of goods and services,  
6 meetings of the board, gross receipts taxes, disposition or  
7 acquisition of property, capital outlays, per diem and mileage  
8 and inspection of records.

9 B. The research applications center shall be  
10 deemed:

11 (1) an agency of the state when applying laws  
12 relating to the furnishing of goods and services by the  
13 research applications center to the state or any other agency,  
14 political subdivision or institution of the state; and

15 (2) a governmental entity for purposes of the  
16 Tort Claims Act; provided that the research applications center  
17 may enter into agreements with insurance carriers to insure  
18 against risk in connection with its operations even though the  
19 risk may be included among the risks covered by the Tort Claims  
20 Act.

21 Section 7. [NEW MATERIAL] ANNUAL AUDIT AND REPORT.--

22 A. The board shall contract annually with an  
23 independent certified public accountant, approved by the state  
24 auditor, to perform an examination and audit of the accounts  
25 and books of the research applications center, including its

.175080.3SA

underscored material = new  
[bracketed material] = delete

1 receipts, disbursements, contracts, leases, sinking funds,  
2 investments and any other records and papers relating to its  
3 financial standing. The certified public accountant shall make  
4 a determination as to whether the research applications center  
5 has complied with the provisions of the New Mexico Research  
6 Applications Act. The person performing the audit shall  
7 furnish copies of the audit report to the governor; the public  
8 regulation commission, where they shall be placed on file and  
9 made available for inspection by the general public; and the  
10 legislative finance committee.

11 B. An annual report of the activities during the  
12 previous fiscal year of the research applications center shall  
13 be provided by the board to the legislative finance committee  
14 at least ninety days in advance of each regular legislative  
15 session. The legislative finance committee shall forward any  
16 report submitted to any interim or standing legislative  
17 committees as deemed appropriate. Upon request of the  
18 appropriate committee, the board or the board of directors of  
19 any corporation formed by the research applications center  
20 shall appear before any interim or standing legislative  
21 committee to provide an accounting of all activities.

22 Section 8. [NEW MATERIAL] CONFLICTS OF INTEREST.--

23 A. If any director, officer or employee of the  
24 research applications center is interested directly or  
25 indirectly or is an officer or employee of or has any ownership

.175080.3SA

underscored material = new  
[bracketed material] = delete

1 interest in a legal entity interested directly or indirectly in  
2 a contract or potential contract with the research applications  
3 center, except for any agency, instrumentality, institution or  
4 political subdivision of the state, the interest shall be  
5 disclosed to the board and shall be set forth in the minutes of  
6 the board. The director, officer or employee having the  
7 interest shall not participate on behalf of the research  
8 applications center in the authorization of the contract.

9 B. Nothing in this section shall prohibit an  
10 officer, director or employee of a financial institution from  
11 participating as a member of the board in setting general  
12 policies of the research applications center, nor shall any  
13 provision of this section be construed as prohibiting a  
14 financial institution of New Mexico from making loans  
15 guaranteed pursuant to the provisions of the New Mexico  
16 Research Applications Act because an officer, director or  
17 employee of the financial institution serves as a member of the  
18 board.

19 C. A person who violates the provisions of this  
20 section is guilty of a misdemeanor and, upon conviction, shall  
21 be punished pursuant to Section 31-19-1 NMSA 1978.

22 Section 9. [NEW MATERIAL] CONTRACTS INVOLVING PUBLIC  
23 EMPLOYEES.--Except as provided in Section 10 of the New Mexico  
24 Research Applications Act, the research applications center  
25 shall not enter into any contract involving services or

.175080.3SA

underscoring material = new  
[bracketed material] = delete

1 property of a value in excess of twenty thousand dollars  
2 (\$20,000) with an employee of the state or one of its agencies,  
3 instrumentalities, institutions or political subdivisions or  
4 with a business in which the employee has a controlling  
5 interest unless the governor or the governor's designee makes a  
6 determination, in writing, that the employee:

7 A. is employed by a university;

8 B. is principally involved in research, public  
9 service, economic development or instruction; and

10 C. is able to provide services that are not readily  
11 available from another person or is able to provide services  
12 that are less expensive or of higher quality than are otherwise  
13 available.

14 Section 10. [NEW MATERIAL] TRANSFER OF TECHNOLOGY.--

15 A. Notwithstanding the provisions of Section 9 of  
16 the New Mexico Research Applications Act, Section 10-16-7,  
17 13-1-190, 21-1-17 or 21-1-35 NMSA 1978 or of any other statute,  
18 ordinance or policy regulating the conduct of public employees,  
19 an officer or employee of a university who is principally  
20 involved in research, public service, economic development or  
21 instruction may, subject to Subsection B of this section, apply  
22 to the secretary of economic development for permission to  
23 establish and maintain a substantial interest in a private  
24 entity that provides or receives equipment, material, supplies  
25 or services in connection with the research applications center

.175080.3SA

1 in order to facilitate the transfer of technology developed by  
2 the officer or employee from the research applications center  
3 to commercial and industrial enterprises for economic  
4 development.

5 B. The secretary of economic development may grant  
6 the permission only if all of the following conditions are met:

7 (1) the employer of the officer or employee  
8 certifies to the secretary that the employer does not object to  
9 the proposed relationship;

10 (2) the officer or employee provides a  
11 detailed description of the officer's or employee's interest in  
12 the private entity;

13 (3) the nature of the proposed undertaking is  
14 fully described;

15 (4) the officer or employee demonstrates, to  
16 the satisfaction of the secretary, that the proposed  
17 undertaking may benefit the economy of this state;

18 (5) the officer or employee demonstrates to  
19 the satisfaction of the secretary that the proposed undertaking  
20 will not adversely affect research, public service or  
21 instructional activities at any educational institution; and

22 (6) the officer's or employee's interest in  
23 the private entity or benefit from the interest will not  
24 adversely affect any substantial state interest.

25 C. The board may establish policies for the

.175080.3SA

underscoring material = new  
[bracketed material] = delete

1 implementation of this section.

2 Section 11. Section 10-16-7 NMSA 1978 (being Laws 1967,  
3 Chapter 306, Section 7, as amended) is amended to read:

4 "10-16-7. CONTRACTS INVOLVING PUBLIC OFFICERS OR  
5 EMPLOYEES.--A state agency shall not enter into a contract for  
6 services, construction or items of tangible personal property  
7 with a public officer or employee of the state, with the family  
8 of the public officer or employee or with a business in which  
9 the public officer or employee or the family of the public  
10 officer or employee has a substantial interest unless the  
11 public officer or employee has disclosed the public officer's  
12 or employee's substantial interest and unless the contract is  
13 awarded pursuant to the Procurement Code, except that the  
14 potential contractor shall not be eligible for a sole source or  
15 small purchase contract; provided that this section does not  
16 apply to a contract of official employment with the state or to  
17 contracts made pursuant to the provisions of the University  
18 Research Park and Economic Development Act or the New Mexico  
19 Research Applications Act. A person negotiating or executing a  
20 contract on behalf of a state agency shall exercise due  
21 diligence to ensure compliance with the provisions of this  
22 section."

23 Section 12. Section 13-1-190 NMSA 1978 (being Laws 1984,  
24 Chapter 65, Section 163, as amended) is amended to read:

25 "13-1-190. UNLAWFUL EMPLOYEE PARTICIPATION PROHIBITED.--  
.175080.3SA

underscored material = new  
[bracketed material] = delete

1           A. Except as permitted by the University Research  
2     Park and Economic Development Act or the New Mexico Research  
3     Applications Act, it is unlawful for any state agency or local  
4     public body employee, as defined in the Procurement Code, to  
5     participate directly or indirectly in a procurement when the  
6     employee knows that the employee or any member of the  
7     employee's immediate family has a financial interest in the  
8     business seeking or obtaining a contract.

9           B. An employee or any member of an employee's  
10    immediate family who holds a financial interest in a disclosed  
11    blind trust shall not be deemed to have a financial interest  
12    with regard to matters pertaining to that trust."

13           Section 13. Section 21-1-17 NMSA 1978 (being Laws 1889,  
14    Chapter 138, Section 68, as amended) is amended to read:

15           "21-1-17. INTEREST IN CONTRACTS BY BOARD MEMBERS OR  
16    EMPLOYEES PROHIBITED.--No employee or member of a board of  
17    regents of [~~any~~] a state educational institution shall have  
18    [~~any~~] direct or indirect financial interest in any contract for  
19    building or improving any of that state educational institution  
20    or for the furnishing of supplies or services to that  
21    institution except as permitted pursuant to the University  
22    Research Park and Economic Development Act or the New Mexico  
23    Research Applications Act, or unless it complies with  
24    provisions of the Governmental Conduct Act and the Procurement  
25    Code."

.175080.3SA

underscoring material = new  
[bracketed material] = delete

1 Section 14. Section 21-1-35 NMSA 1978 (being Laws 1923,  
2 Chapter 148, Section 1415, as amended) is amended to read:

3 "21-1-35. SALES BY BOARDS, OFFICERS OR EMPLOYEES  
4 PROHIBITED--PARTIES TO CONTRACTS RECEIVING COMMISSION OR  
5 PROFIT--PENALTY.--No board of regents of a state educational  
6 institution, no member of a board and no school official or  
7 teacher, either directly or indirectly, shall sell to [~~any~~] a  
8 state educational institution that [~~he~~] the person is connected  
9 with by reason of being a member of a board of regents of a  
10 state educational institution or to [~~any~~] a school official or  
11 teacher, any school books, school furniture, equipment,  
12 apparatus or any other kind of school supplies, sell property  
13 insurance or life insurance to [~~any~~] an employee of that state  
14 educational institution or do any work under contract, nor  
15 shall any such board or members thereof or school officers or  
16 teachers receive any commission or profit on account thereof,  
17 and all such persons are prohibited from being parties directly  
18 or indirectly to any such contract or transaction; provided  
19 that the provisions of this section shall not apply to  
20 contracts that are entered into pursuant to the provisions of  
21 the University Research Park and Economic Development Act or  
22 the New Mexico Research Applications Act or that comply with  
23 provisions of the Governmental Conduct Act and the Procurement  
24 Code. Any person violating the provisions of this section  
25 shall be fined not exceeding one thousand dollars (\$1,000) or

.175080.3SA

underscoring material = new  
[bracketed material] = delete

1 imprisoned not exceeding one year in the penitentiary of New  
2 Mexico or be fined and imprisoned as set forth in this section  
3 in the discretion of the court."

4 Section 15. TEMPORARY PROVISION--TRANSFER.--On the  
5 effective date of this act, all personnel, appropriations,  
6 money, records, property, equipment and supplies of the  
7 technology research collaborative shall be transferred to the  
8 economic development department for the use of the research  
9 applications center and all existing contracts, agreements and  
10 obligations in effect for the technology research collaborative  
11 shall be binding and effective on the economic development  
12 department.

13 Section 16. REPEAL.--Section 21-11-8.5 NMSA 1978 (being  
14 Laws 2005, Chapter 81, Section 1) is repealed.

15 Section 17. EMERGENCY.--It is necessary for the public  
16 peace, health and safety that this act take effect immediately.